

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1698 of 1998

Date of decision: 29-6-98

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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PARESH SHANTILAL PANDYA

Versus

KANTABEN GHANSHYAMBHAI BHATT  
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Appearance:

MR KJ KAKKAD for the appellant  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/06/98

ORAL JUDGEMENT

This is an appeal under section 56 of the Indian Succession Act, directed against the order dated 17th February, 1998 passed in Civil Misc. Application No.559 of 1995 filed on 19th December, 1995 by the respondent No.1 herein for obtaining heirship certificate in respect of property situated at Rajkot which was purchased under a registered sale deed Exh.17 in July, 191966 by deceased Ghanshyambhai Bhatt, who died on 14th November, 1989.

2. Respondent No.1 is the widow of Ghanshyambhai Bhatt. Respondents No.2 and 3 are objectors in the proceedings initiated by respondent No.1 for grant of heirship certificate. Ghanshyambhai Bhatt is survived by his widow - respondent No.1 herein, three sons and two daughters. All the sons and daughters have favoured in writing respondent No.1, meaning thereby, they have given their no objection in case heirship certificate is granted in favour of respondent No.1, i.e. their mother. In response to the public notice issued in the local news paper inviting objections, Paresh Shantilal Pandya -the appellant herein - and Rajnikant Shantilal Pandya with Arun Laxmishankar Bhatt filed objections. The learned court below rejected the objections of the appellant and respondents No.2 and 3 under the impugned order. Respondents No.2 and 3 have not preferred any appeal before this court. So in this appeal I am only concerned with the objections filed by the appellant.

3. The appellant raised main objection that the property in respect of which respondent No.1 seeks heirship certificate was not self-acquired property of the deceased, and that it was an ancestral property wherein he has right to claim share. Another objection is regarding valuation of the property. The objector put the value of the property at more than Rs.10 lacs. The objection was that the property in respect of which heirship certificate was claimed by respondent No.1 was purchased with the help of the money which the objector's father sent to the deceased Ghanshyambhai Bhatt. It has further been stated that the sale deed under which Laxmishankar sold this property to the deceased is a bogus document. In the course of argument one more objection has been raised, that the heirship certificate cannot be claimed and cannot be granted in respect of part or portion of the estate of the deceased. The learned court below has not accepted any of the objections raised by the objector and under the impugned order heirship certificate was ordered to be granted in favour of respondent No.1. Hence this appeal before this court.

4. In this appeal the learned counsel for the appellant has raised three fold contentions. Firstly it is contended that the property in question has been purchased by the deceased Ghanshyambhai Bhatt from the money which has been sent by money order by the appellant's father from Bombay. It is next contended that the sale deed which has been executed by Laxmishankar in favour of Ghanshyambhai Bhatt was a bogus sale deed; and the property is the ancestral property. That the appellant being class I heir, no heirship certificate could have been granted in favour of respondent No.1. Lastly it has been contended that heirship certificate could not have been granted in respect of part or portion of the properties of deceased Ghanshyambhai Bhatt.

5. I have given my thoughtful consideration to the submissions made by the learned counsel for the appellant.

6. Learned counsel for the appellant does not dispute that after the proceedings, out of which this appeal has arisen have been initiated by respondent No.1, the appellant has filed civil suit claiming his share of right and interest in this property which is subject matter of these proceedings. Learned court below has also noticed this fact and observed as under:

"Now, since the objector has already filed civil suit, claiming a share, right or interest in this property, his interest is not going to be adversely affected in any way by the grant of heirship certificate to the applicant, because, heirship certificate does not confer a title on the grantee in respect of the property, but it merely enables or authorises grantee to manage or administer the property of the deceased. It is always subject to the rights and liabilities declared by the competent civil court in respect of such property."

It is not in dispute that there is registered sale deed Exh.17 on the record of these proceedings under which the property in dispute has been sold by Laxmishankar Bhatt to Ghanshyambhai Bhatt. This sale deed is of the year 1966 and it is also not in dispute that the objector appellant herein at no point of time had challenged that sale deed. Only when respondent No.1 filed the application for heirship certificate he has come forward with these objections. Though the learned counsel for

the appellant raised all these contentions, his insistence is also there for decision on this question by this court. But in view of the fact that the appellant had already filed regular civil suit for his right in the property in dispute, any finding given on this question will prejudice the suit. Learned trial court has rightly observed that the proceedings for grant of heirship certificate under the provisions of the Indian Succession Act are of summary nature and the heirship certificate does not confer a title on the grantee in respect of the property. The trial court rightly further observed that the interest that are claimed by the appellant in the disputed property is not going to be adversely affected in any way by grant of heirship certificate to respondent No.1, as heirship certificate does not confer any title in the property and it merely enables or authorises the grantee to manage or administer the property of the deceased. So, all the contentions now raised by the appellant- objector in these proceedings should have been reserved for being raised in the civil suit. Heirship certificate is always subject to the rights and liabilities declared by the competent court in respect of this property. Insistence of the learned counsel for the appellant for decision on merits on the issue when the appellant has chose to file civil suit after these proceedings were initiated seems to be not well founded. For the purpose of prima facie satisfying for grant of heirship certificate, if some findings are given by the court in the proceedings initiated under the provisions of the Indian Succession Act, those findings are of tentative nature and are not final and conclusive to the extent of deciding the rights and liabilities in the subject property. The lower court has rightly observed that these are matters to be exclusively decided by the competent civil court.

7. Another contention raised is that the heirship certificate could not have been granted for portion or part of the property of the deceased Ghanshyambhai Bhatt. Suffice it to say that the learned court below has gone on this question in depth and it has rightly decided that this contention is not acceptable. The authority on which reliance has been placed by the counsel for the appellant is hardly of any help in these proceedings. Distinction has rightly been drawn between the proceedings initiated for the grant of probate as well the proceedings initiated for grant of heirship certificate. The learned court below has not committed any error in granting heirship certificate in favour of respondent No.1 in these proceedings. Registered sale deed is the basis and foundation for the prayer made by

respondent No.1 for grant of heirship certificate in her favour. This document is not in dispute. But the dispute is that this property has been purchased with the financial aid given by the father of the appellant and that Laxmishankar Bhatt could not have executed the sale deed in favour of Ghanshyambhai Bhatt, which are matters to be gone into and decided by the competent civil court.

8. In the result this appeal fails and the same is dismissed. However, it is made clear that whatever finding is recorded in these proceedings may not be taken to be binding between the parties in the civil suit. No order as to costs.

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